

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1216
Commerce Committee Substitute Adopted 6/8/10
Finance Committee Substitute Adopted 6/9/10
House Committee Substitute Favorable 6/16/10
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1216-PCS35474-ROf-118

Short Title: Extend Emergency Foreclosure Program.

(Public)

Sponsors:

Referred to:

May 19, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE
3 HOME FORECLOSURES ACT, TO INCREASE AND AUTHORIZE FEES UNDER
4 THE S.A.F.E. MORTGAGE LICENSING ACT, AND TO REVISE THE DEFINITION
5 OF CERTAIN TERMS IN THE PREDATORY LENDING LAW.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 11 of Chapter 45 of the General Statutes reads as rewritten:

8 "Article 11.

9 "Emergency Program to Reduce Home Foreclosures.

10 **"§ 45-100. (For expiration date, see note) Title.**

11 This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

12 **"§ 45-101. (For expiration date, see note) Definitions.**

13 The following definitions apply throughout this Article:

14 (1) Act as a mortgage servicer. – To engage, whether for compensation or gain
15 from another or on its own behalf, in the business of receiving any scheduled
16 periodic payments from a borrower pursuant to the terms of any mortgage
17 loan, including amounts for escrow accounts, and making the payments of
18 principal and interest and such other payments with respect to the amounts
19 received from the borrower as may be required pursuant to the mortgage
20 loan, the mortgage servicing loan documents, or servicing contract.

21 (1a) Annual percentage rate. — Defined in G.S. 24-1.1F.

22 (1b) Home loan. – A loan that has all of the following characteristics:

- 23 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)
24 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage
25 transaction, or (iv) a bridge loan with a term of 12 months or less,
26 such as a loan to purchase a new dwelling where the borrower plans
27 to sell a current dwelling within 12 months.
- 28 b. The borrower is a natural person.
- 29 c. The debt is incurred by the borrower primarily for personal, family,
30 or household purposes.



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- 1 d. The principal amount of the loan does not exceed the conforming
2 loan size limit for a single-family dwelling as established from time
3 to time by Fannie Mae.
- 4 e. The loan is secured by (i) a security interest in a manufactured home,
5 as defined in G.S. 143-145, in the State which is or will be occupied
6 by the borrower as the borrower's principal dwelling, (ii) a mortgage
7 or deed of trust on real property in the State upon which there is
8 located an existing structure designed principally for occupancy of
9 from one to four families that is or will be occupied by the borrower
10 as the borrower's principal dwelling, or (iii) a mortgage or deed of
11 trust on real property in the State upon which there is to be
12 constructed using the loan proceeds a structure or structures designed
13 principally for occupancy of from one to four families which, when
14 completed, will be occupied by the borrower as the borrower's
15 principal dwelling.
- 16 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,
17 repair, rehabilitate, remodel, or improve the dwelling or the real
18 property on which it is located, (iii) satisfy and replace an existing
19 obligation secured by the same real property, or (iv) consolidate
20 existing consumer debts into a new home loan.
- 21 (2) Mortgage lender. – A person engaged in the business of making mortgage
22 loans for compensation or gain.
- 23 (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage
24 servicer as that term is defined in subdivision (1) of this section or who
25 otherwise meets the definition of the term "servicer" in the Real Estate
26 Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage
27 loans.
- 28 (3a) Rate spread home loan.—A home loan in which all the following apply:
- 29 a. ~~The difference between the annual percentage rate for the loan and
30 the yield on U.S. Treasury securities having comparable periods of
31 maturity is either equal to or greater than (i) three percentage points
32 (3%), if the loan is secured by a first lien mortgage or deed of trust,
33 or (ii) five percentage points (5%), if the loan is secured by a
34 subordinate lien mortgage or deed of trust. Without regard to whether
35 the loan is subject to or reportable under the provisions of the Home
36 Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the
37 difference between the annual percentage rate and the yield on
38 Treasury securities having comparable periods of maturity shall be
39 determined using the same procedures and calculation methods
40 applicable to loans that are subject to the reporting requirements of
41 HMDA, as those procedures and calculation methods are amended
42 from time to time, provided that the yield on Treasury securities shall
43 be determined as of the fifteenth day of the month prior to the
44 application for the loan.~~
- 45 b. ~~The difference between the annual percentage rate for the loan and
46 the conventional mortgage rate is either equal to or greater than (i)
47 one and three fourths percentage points (1.75%), if the loan is
48 secured by a first lien mortgage or deed of trust, or (ii) three and
49 three-fourths percentage points (3.75%), if the loan is secured by a
50 subordinate lien mortgage or deed of trust. For purposes of this
51 calculation, the "conventional mortgage rate" means the most recent~~

1 daily contract interest rate on commitments for fixed-rate first
2 mortgages published by the Board of Governors of the Federal
3 Reserve System in its Statistical Release H.15, or any publication
4 that may supersede it, during the week preceding the week in which
5 the interest rate for the loan is set.

- 6 (4) ~~Subprime loan.—A loan, originated on or after January 1, 2005, but before~~
7 ~~December 31, 2007, that meets the definition of a rate spread home loan~~
8 ~~under this Article. A mortgage servicer may rely on a chart reflecting the~~
9 ~~appropriate interest rate triggers for rate spread home loans for each day of~~
10 ~~the period covered by this Article provided by the Commissioner of Banks~~
11 ~~for the purposes of determining if a loan is a subprime loan covered by this~~
12 ~~Article. The Commissioner shall provide the chart at least 60 days prior to~~
13 ~~the effective date of this act.~~

14 **"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for subprime home loans.**

15 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a
16 primary residence, mortgage servicers of subprime home loans shall send written notice by
17 mail to the last known address of the borrower to inform the borrower of the availability of
18 resources to avoid foreclosure, including:

- 19 (1) An itemization of all past due amounts causing the loan to be in default.
20 (2) An itemization of any other charges that must be paid in order to bring the
21 loan current.
22 (3) A statement that the borrower may have options available other than
23 foreclosure and that the borrower may discuss available options with the
24 mortgage lender, the mortgage servicer, or a counselor approved by the U.S.
25 Department of Housing and Urban Development.
26 (4) The address, telephone number, and other contact information for the
27 mortgage lender, the mortgage servicer, or the agent for either of them who
28 is authorized to attempt to work with the borrower to avoid foreclosure.
29 (5) The name, address, telephone number, and other contact information for one
30 or more HUD-approved counseling agencies operating to assist borrowers in
31 North Carolina to avoid foreclosure.
32 (6) The address, telephone number, and other contact information for the
33 consumer complaint section of the Office of Commissioner of ~~Banks.~~ Banks,
34 or, alternatively, if the loan is serviced by a credit union, the address,
35 telephone number, and other contact information for the consumer complaint
36 section of the Credit Union Division.

37 **"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the**
38 **Administrative Office of the Courts for certain subprime home loans.**

39 (a) Within three business days of mailing the notice required by G.S. 45-102, the
40 mortgage servicer shall file certain information with the Administrative Office of the Courts.
41 The filing shall be in an electronic format, as designated by the Administrative Office of the
42 Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the
43 last scheduled payment made by the borrower, and the date the notice was mailed to the
44 borrower. The Administrative Office of the Courts shall establish an internal database to track
45 information required by this section. The Commissioner of Banks shall design and develop the
46 database, in consultation with the Administrative Office of the Courts. Only the Administrative
47 Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided
48 by G.S. 45-107 shall have access to the database.

49 (b) As permitted by applicable State and federal law, optional information may be
50 requested from the mortgage servicer to facilitate further review by the State Home Foreclosure
51 Prevention Project described in G.S. 45-104. ~~The nature of the optional information requested~~

1 shall be determined in connection with the design of the database established by subsection (e)
2 of this section. This optional information shall be used by the State Home Foreclosure
3 Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and
4 to prevent delay for defaults where foreclosure is unavoidable.

5 (e) ~~No later than October 1, 2008, the Administrative Office of the Courts shall~~
6 ~~establish an internal database to track information provided in this section. The Commissioner~~
7 ~~of Banks shall design and develop this database, in consultation with the Administrative Office~~
8 ~~of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention~~
9 ~~Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks,~~
10 ~~and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~

11 **"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention**
12 **Project.Project and Fund.**

13 (a) The Commissioner of Banks is authorized to establish the State Home Foreclosure
14 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for
15 certain subprime home loans. In developing the Project, the Commissioner may include input
16 from HUD-approved housing counselors, community organizations, the Credit Union Division
17 and other state-State agencies, mortgage lenders, mortgage servicers, and other partners.

18 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed
19 and maintained by the Office of the Commissioner of Banks. The funds shall be held separate
20 from any other funds received by the Office of the Commissioner of Banks in trust for the
21 operation of the State Home Foreclosure Prevention Project.

22 (c) Upon the filing of the information required under G.S. 45-103, the mortgage
23 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure
24 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered
25 by this act. The collection of this fee shall be managed by the Office of the Commissioner of
26 Banks in a manner so as to minimize burdens on mortgage servicers in complying with the
27 requirements of this section.

28 (d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure
29 Prevention Trust Fund to implement the purposes of this act in the following manner:

30 (1) An amount, not to exceed the greater of two million two hundred thousand
31 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover
32 the administrative costs of the operation of the program by the Office of the
33 Commissioner of Banks, including managing on behalf of the
34 Administrative Office of the Courts the database identified in G.S. 45-103,
35 expenses associated with informing homeowners of State resources available
36 for foreclosure prevention, expenses associated with connecting
37 homeowners to available resources, and assistance to homeowners and
38 counselors in communicating with mortgage servicers.

39 (2) An amount, not to exceed the greater of three million four hundred thousand
40 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or
41 reimburse nonprofit housing counseling agencies for providing foreclosure
42 prevention counseling services to homeowners involved in the State Home
43 Foreclosure Prevention Project.

44 (3) An amount, not to exceed thirty percent (30%) of the total funds collected
45 per year, to make grants to or reimburse nonprofit legal service providers for
46 services rendered on behalf of homeowners in danger of defaulting on a
47 home loan to avoid foreclosure, limited to legal representation such as
48 negotiation of loan modifications or other loan work-out solutions,
49 defending homeowners in foreclosure or representing homeowners in
50 bankruptcy proceedings, and research and counsel to homeowners regarding
51 the status of their home loans.

1 (4) Any funds remaining upon the expiration of the State Home Foreclosure
2 Prevention Project shall be directed to the North Carolina Housing Trust
3 Fund.

4 (e) The Commissioner of Banks shall have the discretion to enter into an agreement to
5 administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner
6 that complements or supplements other State and federal programs directed to prevent
7 foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

8 "**§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

9 The Commissioner of Banks shall review information provided in the database created by
10 G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid
11 foreclosure. If the Commissioner reasonably believes, based on a full review of the loan
12 information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest
13 in staying in the home, and other appropriate factors, that further efforts by the State Home
14 Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary
15 residences, the Commissioner shall have the authority to extend one time under this Article the
16 allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days
17 beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner
18 makes the determination that a loan is subject to this section, the Commissioner shall notify the
19 borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage
20 servicer is a state or federally chartered credit union, the Commissioner shall also notify the
21 Administrator of the Credit Union Division of the determination.

22 "**§ 45-106. (For expiration date, see note) Use and privacy of records.**

23 The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall
24 be exclusively for the use and purposes of the State Home Foreclosure Prevention Project
25 developed by the Commissioner of Banks in accordance with G.S. 45-104. The information
26 provided to the database is not a public record, except that a mortgage lender and a mortgage
27 servicer shall have access to the information submitted only with regard to its own loans. Any
28 notice provided by the Commissioner to the Administrator of the Credit Union Division under
29 G.S. 45-105 is not a public record. Provision of information to the Administrative Office of the
30 Courts for use by the State Home Foreclosure Prevention Project shall not be considered a
31 violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of
32 privacy rights of the borrower with respect to the information the mortgage servicer provides in
33 accordance with this Article.

34 "**§ 45-107. (For expiration date, see note) Foreclosure filing.**

35 (a) For the duration of the program authorized by this Article, foreclosure notices filed
36 on ~~subprime~~ home loans on or after ~~November 15, 2008, November 1, 2010,~~ shall contain a
37 certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the
38 pre-foreclosure information required by G.S. 45-103 were provided in accordance with this
39 Article and that the periods of time established by the Article have elapsed.

40 (b) The clerk of superior court or other judicial officer may have access to the
41 pre-foreclosure database to confirm information provided in subsection (a) of this section. A
42 materially inaccurate statement in the certification shall be cause for dismissal without
43 prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage
44 servicer and for payment by the filing party of costs incurred by the borrower in defending the
45 foreclosure proceeding."

46 **SECTION 2.** G.S. 45-21.16(c2) reads as rewritten:

47 "(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15,~~
48 ~~2008, November 1, 2010,~~ where the underlying mortgage debt is a ~~subprime~~ home loan as
49 defined in ~~G.S. 45-101(4), G.S. 45-101(1b),~~ the notice required by subsection (b) of this section
50 shall contain a certification by the filing party that the pre-foreclosure notice and information

1 required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the
2 periods of time established by Article 11 of this Chapter have elapsed."

3 **SECTION 3.** G.S. 45-21.16(d) reads as rewritten:

4 "(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be
5 held before the clerk of court in the county where the land, or any portion thereof, is situated. In
6 the event that the property to be sold consists of separate tracts situated in different counties or
7 a single tract in more than one county, only one hearing shall be necessary. However, prior to
8 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
9 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
10 evidence of the parties and may consider, in addition to other forms of evidence required or
11 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence
12 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to
13 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v)
14 that the underlying mortgage debt is not a ~~subprime-home~~ loan as defined in ~~G.S. 45-101(4),~~
15 G.S. 45-101(1b), or if the loan is a ~~subprime-home~~ loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b),
16 that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that
17 the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall
18 authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or
19 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A
20 certified copy of any authorization or order by the clerk shall be filed in any other county where
21 any portion of the property to be sold is located before the mortgagee or trustee may proceed to
22 advertise and sell any property located in that county. In the event that sales are to be held in
23 more than one county, the provisions of G.S. 45-21.7 apply."

24 **SECTION 4.** G.S. 53-244.090(b) reads as rewritten:

25 "(b) Each principal and each branch office of a mortgage broker or mortgage lender
26 licensed under the provisions of this Article shall be issued a separate license for which the
27 Commissioner shall assess a nonrefundable filing fee of ~~one hundred twenty five dollars~~
28 (\$125.00) three hundred dollars (\$300.00) in addition to the Nationwide Mortgage Licensing
29 System and Registry processing fee. A licensed mortgage broker or mortgage lender shall file
30 with the Commissioner a notice on a form prescribed by the Commissioner that identifies the
31 address of the principal office and each branch office and its designated branch manager.
32 Payment of the license fee under subsection (a) of this section shall be deemed to cover the
33 location license fee for the principal office of each mortgage lender, mortgage broker, or
34 mortgage servicer without payment of an additional ~~one hundred twenty five dollars (\$125.00)~~
35 three hundred dollars (\$300.00) under this subsection."

36 **SECTION 5.** G.S. 53-244.010(b) reads as rewritten:

37 "(b) A license may be renewed on or after November 1 of each year by complying with
38 the requirements of subsection (c) of this section and by paying to the Commissioner, in
39 addition to the actual cost of obtaining credit reports and State and national criminal history
40 record checks and of processing fees of the nationwide system as the Commissioner shall
41 require, nonrefundable renewal fees as follows:

- 42 (1) Licensed mortgage lenders, licensed mortgage brokers, and licensed
43 mortgage servicers shall pay an annual renewal fee of six hundred
44 twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay
45 an annual renewal fee of three hundred dollars (\$300.00), and licensed
46 mortgage lenders and mortgage brokers shall pay ~~one hundred twenty five~~
47 dollars (\$125.00) three hundred dollars (\$300.00) for each licensed branch
48 office.
- 49 (2) Licensed mortgage loan originators shall pay an annual renewal fee of
50 ~~sixty seven dollars and fifty cents (\$67.50).~~ one hundred twenty-five dollars
51 (\$125.00)."

1 **SECTION 6.** G.S. 53-244.119 is amended by adding a new subsection to read:

2 "(e) The Commissioner may require a licensee to pay, through the National Mortgage
3 Licensing System, a reasonable administrative processing fee, not to exceed seventy-five
4 dollars (\$75.00), for each of the following licensing status changes:

5 (1) A change in the name of the licensee.

6 (2) A change in the address of the licensee's principal office.

7 (3) For mortgage loan originators, a change in the licensee's sponsors.

8 (4) For mortgage lenders, mortgage brokers, and mortgage servicers, a change
9 in the control of the licensee.

10 (5) A change in the identity of the branch manager of any branch of the licensee.

11 (6) A change in the identity of the licensee's qualified individual."

12 **SECTION 7.** G.S. 24-1.1E(a)(5) reads as rewritten:

13 "(5) "Points and fees" is defined as provided in this subdivision.

14 a. The term includes all of the following:

15 1. All items paid by a borrower at or before closing and that are
16 required to be disclosed under sections 226.4(a) and 226.4(b)
17 of Title 12 of the Code of Federal Regulations, as amended
18 from time to time, except interest or the time-price
19 differential. However, the meaning of the term "points and
20 fees" shall not include either (i) the portion of the up-front
21 fees collected and paid to the Federal Housing
22 Administration, the Veterans' Administration, or the U.S.
23 Department of Agriculture to insure or guarantee a home loan
24 that exceeds one and one-quarter percent (1.25%) of the total
25 loan amount or (ii) the portion of any up-front private
26 mortgage insurance premium, charge, or fee that exceeds one
27 and one-quarter percent (1.25%) of the total loan amount,
28 provided that the private mortgage insurance premium,
29 charge or fee is required to be refundable on a prorated basis,
30 the refund is automatically issued upon notification of the
31 satisfaction of the underlying mortgage loan, and the
32 borrower has the right to request or receive a prorated refund
33 in accordance with state or federal law.

34 2. All charges paid by a borrower at or before closing and that
35 are for items listed under section 226.4(c)(7) of Title 12 of the
36 Code of Federal Regulations, as amended from time to time,
37 but only if the lender receives direct or indirect compensation
38 in connection with the charge or the charge is paid to an
39 affiliate of the lender; otherwise, the charges are not included
40 within the meaning of the phrase "points and fees".

41 3. To the extent not otherwise included in sub-subdivision a.1.
42 or a.2. of this subdivision, all compensation paid from any
43 source to a mortgage broker, including compensation paid to
44 a mortgage broker in a table-funded transaction. A bona fide
45 sale of a loan in the secondary mortgage market shall not be
46 considered a table-funded transaction, and a table-funded
47 transaction shall not be considered a secondary market
48 transaction.

49 4. The maximum prepayment fees and penalties which may be
50 charged or collected under the terms of the loan documents.

- 1 b. Notwithstanding the remaining provisions of this subdivision, the
2 term does not include (i) taxes, filing fees, recording and other
3 charges and fees paid or to be paid to public officials for determining
4 the existence of or for perfecting, releasing, or satisfying a security
5 interest; and (ii) fees paid to a person other than a lender or an
6 affiliate of the lender or to the mortgage broker or an affiliate of the
7 mortgage broker for the following: fees for tax payment services;
8 fees for flood certification; fees for pest infestation and flood
9 determinations; appraisal fees; fees for inspections performed prior to
10 closing; credit reports; surveys; attorneys' fees (if the borrower has
11 the right to select the attorney from an approved list or otherwise);
12 notary fees; escrow charges, so long as not otherwise included under
13 sub-subdivision a. of this subdivision; title insurance premiums; and
14 premiums for insurance against loss or damage to property, including
15 hazard insurance and flood insurance premiums, provided that the
16 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
17 Regulations are met.
- 18 c. For open-end credit plans, the term includes those points and fees
19 described in sub-subdivisions a.1. through a.3. of this subdivision,
20 plus (i) the minimum additional fees the borrower would be required
21 to pay to draw down an amount equal to the total loan amount, and
22 (ii) the maximum prepayment fees and penalties which may be
23 charged or collected under the terms of the loan documents."

24 **SECTION 8.** G.S. 24-1.1E(a)(6) reads as rewritten:

25 "(6) "Thresholds" means:

- 26 a. Without regard to whether the loan transaction is or may be a
27 "residential mortgage transaction" (as the term "residential mortgage
28 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
29 of Federal Regulations, as amended from time to time), the annual
30 percentage rate of the loan at the time the loan is consummated is
31 such that the loan is considered a "mortgage" under section 152 of
32 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
33 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
34 time to time, and regulations adopted pursuant thereto by the Federal
35 Reserve Board, including section 226.32 of Title 12 of the Code of
36 Federal Regulations, as the same may be amended from time to time;
- 37 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
38 ~~five-four~~ percent ~~(5%)~~ ~~(4%)~~ of the total loan amount if the total loan
39 amount is twenty thousand dollars (\$20,000) or more, or (ii) the
40 lesser of eight percent (8%) of the total loan amount or one thousand
41 dollars (\$1,000), if the total loan amount is less than twenty thousand
42 dollars (\$20,000); provided, the following discount points and
43 prepayment fees and penalties shall be excluded from the calculation
44 of the total points and fees payable by the borrower:
- 45 1. Up to and including two bona fide loan discount points
46 payable by the borrower in connection with the loan
47 transaction, but only if the interest rate from which the loan's
48 interest rate will be discounted does not exceed by more than
49 one percentage point (1%) the required net yield for a 90-day
50 standard mandatory delivery commitment for a reasonably

- 1 comparable loan from either Fannie Mae or the Federal Home
2 Loan Mortgage Corporation, whichever is greater;
- 3 2. Up to and including one bona fide loan discount point
4 payable by the borrower in connection with the loan
5 transaction, but only if the interest rate from which the loan's
6 interest rate will be discounted does not exceed by more than
7 two percentage points (2%) the required net yield for a
8 90-day standard mandatory delivery commitment for a
9 reasonably comparable loan from either Fannie Mae or the
10 Federal Home Loan Mortgage Corporation, whichever is
11 greater;
- 12 3. For a closed-end loan, prepayment fees and penalties which
13 may be charged or collected under the terms of the loan
14 documents which do not exceed one percent (1%) of the
15 amount prepaid, provided the loan documents do not permit
16 the lender to charge or collect any prepayment fees or
17 penalties more than 30 months after the loan closing;
- 18 4. For an open-end credit plan, prepayment fees and penalties
19 which may be charged or collected under the terms of the
20 loan documents which do not exceed one percent (1%) of the
21 amount prepaid, provided the loan documents do not permit
22 the lender to charge or collect any prepayment fees or
23 penalties more than (i) 30 months after the loan closing if the
24 borrower has no right or option under the loan documents to
25 repay all or any portion of the outstanding balance of the
26 open-end credit plan at a fixed interest rate over a specified
27 period of time or, (ii) if the borrower has a right or option
28 under the loan documents to repay all or any portion of the
29 outstanding balance of the open-end credit plan at a fixed
30 interest rate over a specified period of time, 30 months after
31 the date the borrower voluntarily exercises that right or
32 option; or
- 33 c. If the loan is a closed-end loan, the loan documents permit the lender
34 to charge or collect prepayment fees or penalties more than 30
35 months after the loan closing or which exceed, in the aggregate, more
36 than two percent (2%) of the amount prepaid. If the loan is an
37 open-end credit plan, the loan documents permit the lender to charge
38 or collect prepayment fees or penalties (i) more than 30 months after
39 the loan closing if the borrower has no right or option under the loan
40 documents to repay all or any portion of the outstanding balance of
41 the open-end credit plan at a fixed interest rate over a specified
42 period of time or, (ii) if the borrower has a right or option under the
43 loan documents to repay all or any portion of the outstanding balance
44 of the open-end credit plan at a fixed interest rate over a specified
45 period of time, more than 30 months after the date the borrower
46 voluntarily exercises that right or option, or (iii) which exceed, in the
47 aggregate, more than two percent (2%) of the amount prepaid."

48 **SECTION 9.** Section 6 of S.L. 2008-226 reads as rewritten:

49 "**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. ~~The remainder of this~~
50 ~~act becomes effective November 1, 2008, and expires October 31, 2010. Sections 1, 2, 3, and 5~~

1 become effective November 1, 2008, and expire May 31, 2013. The remainder of this act is
2 effective when it becomes law."

3 **SECTION 10.** Sections 1 through 3 of this act become effective November 1,
4 2010, and expire on May 31, 2013. Sections 4 through 8 of this act become effective September
5 1, 2010. The remainder of this act is effective when it becomes law.